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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

KRISTIN K. MAYES, Chairman
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AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:

DOCKET NO: S-20656A-09-0074

DAVID W. COLE and SIIRI COLE, husband
and wife

NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO
CEASE AND DESIST, ORDER FOR
RESTITUTION, FOR ADMINISTRATIVE
PENALTIES AND FOR OTHER
AFFIRMATIVE ACTION

HIGHLINE ESTATES, LLC, an Arizona
limited liability company

MUTUAL FINANCIAL SERVICES, LLC
(d/b/a MFS Real Estate Division and MFS
Investments), an Arizona limited liability
company

DREAM CRAFT, LLC, an Arizona limited
liability company

SCOT A. OGLESBY (d/b/a Arizona Asset
Management) and LORI ANN OGLESBY,
husband and wife

RANDY K. WARD (CRD # 4137944) (d/b/a
Arizona Asset Management) and SHARON
WARD, husband and wife

Respondents.

Arizona Corporation Commission

DOCKETED

FEB 19 2009

DOCKETED BY

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NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission")
alleges that respondents DAVID W. COLE, HIGHLINE ESTATES, LLC, an Arizona limited liability
company, MUTUAL FINANCIAL SERVICES, LLC (d/b/a MFS Real Estate and MFS Investments),
an Arizona limited liability company, DREAM CRAFT, LLC, an Arizona limited liability company,
SCOT A. OGLESBY (d/b/a Arizona Asset Management), and RANDY K. WARD (CRD #4137944)

(d/b/a Arizona Asset Management) have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENTS

2. DAVID W. COLE ("COLE") is an individual who at all relevant times resides in Arizona.

3. SIIRI COLE was at all relevant times the spouse of COLE. SIIRI COLE is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community. At all times relevant, COLE was acting for his own benefit, and for the benefit or in furtherance of the marital community.

4. HIGHLINE ESTATES, LLC ("HIGHLINE") is an Arizona limited liability company organized on or about May 9, 2005. According to Commission records, COLE was HIGHLINE's sole manager from May 9, 2005 until July 2, 2006. Mutual Financial Services, LLC (d/b/a MFS Real Estate and MFS Investments) ("MFS") became HIGHLINE's sole manager from July 3, 2006 until the present.

5. MFS is an Arizona limited liability company organized on or about January 18, 2000. According to Commission records, MFS is solely managed by Dream Craft Homes, LLC ("DREAM CRAFT").

6. DREAM CRAFT is an Arizona limited liability company organized on or about July 3, 2006. According to Commission records, COLE and others are members of DREAM CRAFT.

7. SCOT A. OGLESBY (d/b/a Arizona Asset Management) ("OGLESBY") is an individual who at all relevant times resides in Arizona.

8. LORI ANN OGLESBY was at all relevant times the spouse of OGLESBY. LORI ANN OGLESBY is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community. At all times relevant, OGLESBY was acting for his own benefit, and for the benefit or in furtherance of the marital community.

9. RANDY K. WARD (CRD# 4137944) (d/b/a Arizona Asset Management) (“WARD”) is an individual who at all relevant times resides in Arizona. WARD has not been a registered salesman since December 2005.

10. SHARON WARD was at all relevant times the spouse of WARD. SHARON WARD is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community. At all times relevant, WARD was acting for his own benefit, and for the benefit or in furtherance of the marital community.

11. COLE, HIGHLINE, MFS, DREAM CRAFT, OGLESBY and WARD may be collectively referred to as "Respondents."

12. SIIRI COLE, LORI ANN OGLESBY and SHARON WARD may be collectively referred to as “Respondent Spouses.”

III.

FACTS

13. Beginning in or around June 2006 until in or around February 2008, HIGHLINE, Oglesby, and Ward offered and sold in Arizona at least \$688,761.53 in securities in the form of notes (hereinafter "Investments") to at least 18 investors, the majority of which reside in Arizona.

14. Beginning in or around 2004, COLE formed a relationship with OGLESBY as both COLE and OGLESBY had offices in the same building. At the time OGLESBY was a salesperson with a company called Easy Street Financial Group, Inc. ("Easy Street"). OGLESBY told COLE he could raise money for COLE's real estate projects.

1 15. Beginning in or around 2006, COLE sought to raise capital in order to fund
2 HIGHLINE. HIGHLINE was to build single family housing units on four undeveloped parcels of
3 land, subdivided into 65 lots, in Phoenix (hereinafter "HIGHLINE Project")

4 16. COLE was in charge of the HIGHLINE Project, but COLE had little experience in
5 buying parcels, building the infrastructure and then selling the homes.

6 17. Beginning in or around 2006, COLE approached Oglesby to sell the Investments as
7 a product to investors. The Investments were in the form of notes in which investors would
8 provide funds that would be pooled together to fund the construction of the infrastructure of the
9 land and the construction of the houses.

10 18. COLE met with OGLESBY and WARD, who worked with OGLESBY at Arizona
11 Asset Management, to discuss raising funds for the HIGHLINE Project. After at least a few
12 meetings with COLE, OGLESBY and WARD agreed to locate investors to raise money by
13 offering and selling the Investments.

14 19. In May and June 2006, OGLESBY and WARD signed employment applications
15 with MFS. MFS, through COLE, signed employment agreements with OGLESBY and WARD.
16 OGLESBY and WARD were compensated by MFS for selling the Investments. According to
17 COLE, OGLESBY and WARD were paid a six percent commission on the amount raised.

18 20. COLE, on behalf of HIGHLINE and MFS, hired OGLESBY and WARD without
19 conducting a background check or asking about any prior securities violations. OGLESBY, Easy
20 Street and another were subject to a Nevada Secretary of State Cease and Desist Order on
21 November 24, 2004 regarding Nevada securities violations. WARD, Easy Street and others were
22 subject to a California Department of Corporations Desist and Refrain Order on April 3, 2003
23 regarding California securities violations. OGLESBY and WARD did not disclose these orders to
24 the investors.

25 21. COLE developed and provided the HIGHLINE Investment documents to
26 OGLESBY and WARD. The Investment documents named HIGHLINE as the borrower. The

1 Investment provided for a 24-month term at 9.5% interest per year with interest paid monthly. The
2 Investment listed as security a corporate guarantee and deed of trust. The Investment included
3 terms that the deed of trust would be filed no later than six months from the date of the agreement.
4 It also stated that the investor's deed would be subordinate to any other deed of trust as HIGHLINE
5 so designates without obtaining permission from the investor. COLE, on behalf of HIGHLINE,
6 signed the Investments.

7 22. OGLESBY and WARD offered and sold the Investments to investors who sought to
8 reinvest their matured certificates of deposit ("CD") or annuities. Typically, when the investors
9 would call, visit, or be visited by OGLESBY to reinvest their CDs or annuities, OGLESBY and
10 WARD would offer and sell the Highline Investment.

11 23. The investors in HIGHLINE were elderly and unsophisticated. At least one investor
12 prematurely cashed in an annuity and was charged an early withdrawal penalty to invest in
13 HIGHLINE. Another investor cashed in an annuity and sold a farm to raise money for the
14 investment.

15 24. OGLESBY and WARD told investors that the HIGHLINE investment paid 9.5%
16 interest each year for a two-year period, which was higher than the rates the investors would get in
17 a CD or an annuity. OGLESBY and WARD told investors HIGHLINE would pay investors a
18 monthly interest payment.

19 25. OGLESBY and WARD had the investors sign the Investment documents but did not
20 give them a copy.

21 26. OGLESBY and WARD did not ask the investors about their financial condition and
22 their ability to withstand the loss.

23 27. OGLESBY and WARD told investors that the Investment was safe because it was
24 secured by real estate. However, HIGHLINE, OGLESBY and WARD failed to disclose to
25 investors whether their deeds of trust would be first deeds of trust or be filed after another deed of
26 trust, failed to disclose that the property was already encumbered by a mortgage, and failed to

1 disclose the subordination paragraph which allowed HIGHLINE to place other investors ahead of
2 another investor at HIGHLINE's discretion despite one investor investing earlier than another.

3 28. OGLESBY met with at least one investor that had previously invested with
4 OGLESBY while OGLESBY was with Easy Street. OGLESBY told the investor about
5 HIGHLINE. This same investor met with COLE to further discuss the Investment. COLE showed
6 the investor a real estate magazine showing the types of houses that would be built. The investor
7 cashed out their annuity and sold a farm to invest in HIGHLINE.

8 29. HIGHLINE, OGLESBY and WARD failed to provide any detail regarding financial
9 information of the development to the investors. At least one investor received a "current projected
10 land value" of the HIGHLINE project. The projected land equity, after development and land
11 acquisition costs, was \$3,150,000. The investors did not receive any financial information on
12 HIGHLINE.

13 30. The Investment documents listed either OGLESBY or WARD as the MFS
14 Representative. COLE, on behalf of HIGHLINE, signed the Investment documents received by the
15 investors.

16 31. OGLESBY and WARD delivered the investor checks and the Investment
17 documents signed by the investors to COLE.

18 32. After investing, some of the investors received a letter from COLE, as President of
19 MFS, on MFS letterhead welcoming them to the private lending program, which was the
20 HIGHLINE Investment. COLE enclosed a lenders' certificate showing HIGHLINE as the
21 borrower of funds and provided to the investors a copy of the Investment documents they signed.
22 COLE signed as the HIGHLINE representative. In at least one instance, one lenders' certificate
23 indicated that MFS was offering the Investment. In at least another instance, the lenders'
24 certificate indicated MFS was brokering the Investment. At least one investor received a loan
25 receipt from MFS, with OGLESBY signing as the representative.

1 33. HIGHLINE, MFS, COLE, OGLESBY, and WARD failed to disclose risks of
2 investment, including, but not limited to: that HIGHLINE was a new company with limited
3 resources, that COLE had limited experience in real estate development, that the HIGHLINE
4 project was not fully funded, whether or not HIGHLINE had pre-sold homes, that the investors did
5 not have first deeds of trust on the property, the economic risks relating to the ability of
6 HIGHLINE to repay the investors, and that the investors could lose all or part of their investment.

7 34. During the time OGLESBY was selling the Investments, the Commission took
8 action against OGLESBY, Easy Street and others by filing a Notice of Opportunity for Hearing
9 Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative
10 Penalties and for Other Administrative Action ("Notice") on September 5, 2006 for violations of
11 Arizona securities laws related to investment products offered by or through Easy Street.
12 HIGHLINE, OGLESBY and WARD continued to offer and sell the Investments but did not
13 disclose the Commission Notice to the investors.

14 35. On October 19, 2006, OGLESBY signed an Order to Cease and Desist, Order for
15 Restitution, Order for Administrative Penalties and for Other Administrative Action and Consent to
16 the Same: Scot Alan Oglesby and Lori Ann Oglesby ("Order") resolving the Commission Notice.
17 OGLESBY stopped selling the Investments in or around October 2006. However, HIGHLINE and
18 WARD continued selling the Investments.

19 36. OGLESBY also sold to at least one investor in Easy Street the Highline investment.

20 37. Although HIGHLINE, MFS, COLE, OGLESBY and WARD represented that the
21 deeds of trust would be filed within six months of signing the loan agreement, HIGHLINE
22 recorded a majority of the investors' deeds of trust in April 2008, which in at least one case was
23 nearly two years after the investment was made.

24 38. Although HIGHLINE, MFS, COLE, OGLESBY and WARD represented that the
25 investors would receive monthly interest payments, HIGHLINE did not pay all investors a monthly
26 interest payment. At least one investor was never paid a monthly interest payment. Another

1 investor had to contact COLE to receive the monthly interest payment, but did not receive the first
2 monthly payment until about a year after investing. In yet another instance, an investor received
3 several monthly interest payments, but then the payments stopped.

4 39. The majority of funds raised from the sale of the Investments were transferred from
5 HIGHLINE to other entities controlled by or through COLE to develop the land. This was not
6 disclosed to the investors.

7 40. At all times relevant, HIGHLINE, COLE, MFS, OGLESBY, and WARD were not
8 registered with the Commission as dealers or salesmen.

9 41. At all times relevant, the Investments were not registered with the Commission.

10 42. HIGHLINE, Oglesby and Ward raised \$688,761.53 from 18 investors, 15 of which
11 are Arizona residents, returned \$37,191.17, for a total of \$651,570.36 that is owed to investors.

12 **IV.**

13 **VIOLATION OF A.R.S. § 44-1841**

14 **(Offer or Sale of Unregistered Securities)**

15 43. From on or about June 2006 until March 2008, HIGHLINE, MFS, COLE,
16 OGLESBY and WARD offered or sold securities in the form of notes within or from Arizona.

17 44. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
18 Securities Act.

19 45. This conduct violates A.R.S. § 44-1841.

20 **V.**

21 **VIOLATION OF A.R.S. § 44-1842**

22 **(Transactions by Unregistered Dealers or Salesmen)**

23 46. HIGHLINE, MFS, COLE, OGLESBY and WARD offered or sold securities in the
24 form of notes within or from Arizona while not registered as dealers or salesmen pursuant to Article
25 9 of the Securities Act.

26 47. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

48. In connection with the offer or sale of securities within or from Arizona, HIGHLINE, MFS, COLE, OGLESBY and WARD directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. The conduct includes, but is not limited to, the following:

a) WARD failed to disclose to at least one investor the California Department of Corporations Desist and Refrain Order against WARD for violations of California's securities laws;

b) OGLESBY failed to disclose to at least one investor the Nevada Secretary of State Cease and Desist Order against OGLESBY for violations of Nevada's securities laws;

c) OGLESBY failed to disclose to at least one investor the Commission action against OGLESBY for violations of Arizona's securities laws;

d) HIGHLINE, MFS, COLE, OGLESBY and WARD failed to disclose to at least one investor the risks of the investment, including but not limited to: that HIGHLINE was a new company with limited resources, that the HIGHLINE project was not fully funded, that COLE had limited experience in real estate development, whether or not HIGHLINE had pre-sold homes, the economic risks relating to the ability of HIGHLINE to repay the investors, and that the investors could lose all or part of their investment;

e) HIGHLINE, MFS, COLE, OGLESBY and WARD misrepresented to at least one investor when the investors' deeds of trust would be filed within 6 months of investing when in

1 fact a majority of the deeds were filed in or around April 2008, which in some cases was nearly two
2 years after investing;

3 f) HIGHLINE, MFS, COLE, OGLESBY and WARD misrepresented to
4 investors that they would receive monthly interest payments when in fact at least one investor did
5 not receive any interest payments, at least one investor did not receive monthly interest payments
6 until a year after investing, and at least one investor received several monthly interest payments and
7 then the payments stopped; and

8 g) OGLESBY and WARD misrepresented to at least one investor that the
9 investment was safe because each investor would receive a deed of trust but OGLESBY and WARD
10 did not tell at least one investor that the property was already encumbered by a mortgage, did not tell
11 them whether their deed of trust was a first deed or would be filed after another deed of trust, and
12 that the subordination paragraph in the loan agreement enabled HIGHLINE to change an investor's
13 priority position at HIGHLINE's discretion.

14 49. This conduct violates A.R.S. § 44-1991.

15 50. MFS directly or indirectly controlled persons within the meaning of A.R.S. § 44-
16 1999, including but not limited to HIGHLINE, OGLESBY and WARD. Therefore, MFS is jointly
17 and severally liable under A.R.S. § 44-1999 to the same extent as HIGHLINE, OGLESBY and
18 WARD for their violations of A.R.S. § 44-1991.

19 51. DREAM CRAFT directly or indirectly controlled persons or entities within the
20 meaning of A.R.S. § 44-1999, including but not limited to HIGHLINE, MFS, OGLESBY, and
21 WARD. Therefore, DREAM CRAFT is jointly and severally liable under A.R.S. § 44-1999 to the
22 same extent as HIGHLINE, MFS, OGLESBY and WARD for their violations of A.R.S. § 44-1991.

23 52. COLE directly or indirectly controlled persons or entities within the meaning of
24 A.R.S. § 44-1999, including but not limited to HIGHLINE, MFS, DREAM CRAFT, OGLESBY,
25 and WARD. Therefore, COLE is jointly and severally liable under A.R.S. § 44-1999 to the same
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1 extent as HIGHLINE, MFS, DREAM CRAFT, OGLESBY and WARD for their violations of
2 A.R.S. § 44-1991.

3 VII.

4 REQUESTED RELIEF

5 The Division requests that the Commission grant the following relief:

6 1. Order Respondents to permanently cease and desist from violating the Securities Act
7 and, pursuant to A.R.S. § 44-2032;

8 2. Order Respondents to take affirmative action to correct the conditions resulting from
9 Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to
10 A.R.S. § 44-2032;

11 3. Order Respondents to pay the state of Arizona administrative penalties of up to five
12 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

13 4. Order that the marital communities of DAVID W. COLE AND SIIRI COLE, SCOT
14 A. OGLESBY AND LORI ANN OGLESBY, AND RANDY WARD AND SHARON WARD be
15 subject to any order of restitution, rescission, administrative penalties, or other appropriate
16 affirmative action pursuant to A.R.S. § 25-215; and

17 5. Order any other relief that the Commission deems appropriate.

18 VIII.

19 HEARING OPPORTUNITY

20 Each respondent, including each respondent spouse, may request a hearing pursuant to
21 A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a**
22 **hearing, the requesting respondent must also answer this Notice.** A request for hearing must be
23 in writing and received by the Commission within 10 business days after service of this Notice of
24 Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket
25 Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing
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1 instructions may be obtained from Docket Control by calling (602) 542-3477 or on the
2 Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

3 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
4 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
5 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
6 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of
7 Opportunity for Hearing. Persons with a disability may request a reasonable accommodation such
8 as a sign language interpreter, as well as request this document in an alternative format, by
9 contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail
10 sbernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the
11 accommodation.

12 IX.

13 ANSWER REQUIREMENT

14 Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing,
15 the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for
16 Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix,
17 Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions
18 may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet
19 web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

20 Additionally, the answering respondent must serve the Answer upon the Division.
21 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-
22 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix,
23 Arizona, 85007, addressed to Aikaterine Vervilos.

24 The Answer shall contain an admission or denial of each allegation in this Notice and the
25 original signature of the answering respondent or respondent's attorney. A statement of a lack of
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1 sufficient knowledge or information shall be considered a denial of an allegation. An allegation
2 not denied shall be considered admitted.

3 When the answering respondent intends in good faith to deny only a part or a qualification
4 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
5 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

6 The officer presiding over the hearing may grant relief from the requirement to file an
7 Answer for good cause shown.

8 Dated this 19th day of February, 2009.

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11 Mark Dinell
12 Assistant Director of Securities
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